



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF V-S-P-

DATE: JAN. 30, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a researcher, seeks classification as an individual of extraordinary ability in the sciences. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had shown that he only met two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that he meets three criteria.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence

requirements. First, a petitioner can demonstrate a one-time achievement (that is a major, internationally recognized award). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

## II. ANALYSIS

The Petitioner is a researcher at the [REDACTED] School of Medicine in [REDACTED]. As he has not received a major, internationally recognized award, the record must demonstrate that he satisfies at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner met the criteria for judging under 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi) but not for original contributions of major significance under 8 C.F.R. § 204.5(h)(3)(v). On appeal, the Petitioner maintains that he meets the criterion for original contributions of major significance. Upon reviewing all of the evidence in the record, we find that the record does not support a finding that the Petitioner satisfies at least three criteria.

*Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

The Director held that the Petitioner met this criterion. The record reflects that the Petitioner has conducted reviews for the following journals *Neuropsychiatric Disease and Treatment*, *Advances in Genomics and Genetics*, and other journals. Therefore, the Petitioner has established that he meets the requirements of this criterion.

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

This regulatory criterion contains multiple evidentiary elements that the Petitioner must satisfy. He must demonstrate that his contributions are original and scientific, scholarly, artistic, athletic, or business-related in nature. The contributions must have already been realized, rather than being prospective possibilities. He must also establish that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase “major significance” is not superfluous and thus has meaning. See *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3d Cir. 1995), quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003). “Contributions of major significance” connotes that the petitioner’s work has significantly impacted the field. See *Visinscaia*, 4 F. Supp. 3d at 134.

The Director held that the letters from professors and researchers that were submitted with the initial petition and in response to the request for evidence (RFE) did not establish the major significance of the Petitioner’s original contributions in the field to meet this criterion. On appeal, the Petitioner asserts that this evidence establishes that he was the first to discover the relationship of the [REDACTED] gene in preventing congenital heart disease and its effects in wound healing and neurological disorders. He also states that he was “the first to establish the relationship between [REDACTED] mutations and the pathogenesis of autosomal recessive primary microcephaly, a debilitating brain condition in infants.” We will address each of these points below.<sup>1</sup>

Regarding the letters from the professors and researchers in the record, an agency “may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony,” but it is ultimately responsible for making the final determination regarding an individual’s eligibility for the benefit sought. *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988).

In support of the the Petitioner’s research on the [REDACTED] gene, the record contains a letter from [REDACTED] an assistant professor at [REDACTED] who states that “[the Petitioner’s] work was the first to show [REDACTED] and its molecular role in neurological disorders.” [REDACTED] then indicates, “Further research is needed to determine the exact impact this protein has on the progression of neural disorders, but [the Petitioner’s] work is an important first step to understand the pathophysiology of these diseases.” [REDACTED] adds, “The increasing incidence of neurodegenerative disorders means that the need to find a treatment or a cure, of which there are

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<sup>1</sup> Counsel for the Petitioner states that the Director “denied the major significance of [the Petitioner’s] work on the basis of a semantic distinction that is neither found in the regulatory language nor inherent to the concept of major significance.” Specifically, the Petitioner refers to the Director’s use of the terms “impact” and “importance” as used in an article the Petitioner submitted from the journal *Scientometrics*. See Lutz Bornmann and Werner Marx, “How to evaluate individual researchers working in the natural and life sciences meaningfully? A proposal of methods based on percentiles of citations.” 98 *Scientometrics* 496 (2014). While we acknowledge the authors’ use of these terms in their scholarly discussion on evaluating researchers, the focus here is on whether the Petitioner’s contributions are of major significance in the field under 8 C.F.R. § 204.5(h)(3)(v). See *Visinscaia*, *supra*, (“Contributions of major significance” mean that the Petitioner’s work has significantly impacted the field).

none, is becoming more urgent.” She then asserts that “his work represents a vital step in advancing our understanding of these conditions and eventually finding ways to treat them.” Here, the letter attests to the originality of the Petitioner’s contribution, but speaks prospectively of its impact, indicating that the Petitioner’s research on [REDACTED] has not yet been of major significance to the field.

Other letters in the record also discuss the Petitioner’s research on [REDACTED].<sup>2</sup> For example, [REDACTED] professor of pharmacology at the [REDACTED], states that the Petitioner “concluded that [REDACTED] is essential for normal cardiac function, and the deficiency of this protein leads to dilated cardiomyopathy and other cardiac issues, making this protein and the mutant mice that he created important tools for investigating new treatments for cardiovascular diseases.” [REDACTED] associate professor at the [REDACTED] states in his letter that the Petitioner “found that [REDACTED] plays an important role in neuronal development in the brain” and that it is “abundantly expressed in the skin during wound healing.” Letters that specifically articulate how an individual’s contributions are of major significance to the field and its impact on subsequent work add value, while those that lack specifics and simply use hyperbolic language do not add value and are not considered to be probative evidence that may form the basis for meeting this criterion.<sup>3</sup> While these letters indicate that he has provided additional knowledge about [REDACTED] the record does not demonstrate in specific detail how the Petitioner’s work has been implemented such to show that it has significantly impacted the field.

[REDACTED] professor emeritus at the [REDACTED] in Germany, indicates in her letter that the Petitioner’s research articles on [REDACTED] “have been cited more than 80 times by many leading researchers in the field.” However, the fact that the Petitioner has published articles that other researchers have referenced is not, by itself, indicative of a contribution of major significance. Publications are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of “major significance.” See *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff’d in part*, 596 F.3d 1115. As noted by the Director, the goal of all research is “to be pioneering and innovative,” or in other words, to advance the understanding of the topics of research. Although these citations show that his research has received some attention from the field, the Petitioner has not shown that the number of citations to his individual papers is indicative of significant influence within the field.

The record contains a letter from [REDACTED] assistant professor at [REDACTED] who provides prenatal and preconception genetic counseling to patients and has reached out to the Petitioner on behalf of patients in her clinic. The record also contains a letter from [REDACTED] an assistant professor of medicine in the division of cardiology at the [REDACTED] who states that based on the Petitioner’s research she began having her patients screened for genetic mutations and then studying their [REDACTED] gene. While these are examples of how the

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<sup>2</sup> Although we may not discuss every letter in the record, all were reviewed and considered in reaching our conclusion.

<sup>3</sup> See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

Petitioner has provided guidance to clinical practitioners, the record does not establish that assisting two individuals and their patients equates to a contribution of major significance to the whole field.

In a letter from [REDACTED] vice dean for innovation and development at the [REDACTED] College of Medicine, she discusses a book chapter she wrote focusing on the structure and function of the human heart. She states that she “extensively discussed the implications and significance of [the Petitioner’s] findings regarding the molecular functions of [REDACTED] in terms of disease-causing mutations.” The Petitioner has not shown that this book is widely used in the field or other evidence demonstrating that the inclusion of his work in this text indicates it is of major significance to the field.

The Petitioner also contends that his research on [REDACTED] mutations constitutes an original contribution of major significance. [REDACTED] states that “[the Petitioner] and his colleagues studied a consanguineous eight generation family that had ten microcephalic children” and that he identified a [REDACTED] mutation that was the “causal variant for [microcephaly].” The Petitioner notes four examples of other researchers who have cited his published findings and notes that his article discussing [REDACTED] has been cited 63 times. He submits a graph from Microsoft Research which ranks the impact and productivity of his publications, but this is of limited probative value as the record does not demonstrate who compiled this report and where the data in the graph originated.

The record also contains information from Google Scholar listing the citations for each of his publications and data from Clarivate Analytics which indicates that this article on [REDACTED] mutations ranks among the top ten percent most cited articles for 2013. While we note that this is the Petitioner’s most cited article, he has not established that this citation rate shows that his work has been widely implemented in the field. Citations to a petitioner’s publications do not alone equate to contribution of major significance. *See Kazarian*, 580 F.3d at 1036 (9th Cir. 2009), *aff’d in part*, 596 F.3d 1115 (publications are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they are of “major significance” in the field). Although these citations show that his research has received attention from the field, the Petitioner has not shown that the number of citations to his individual papers is indicative of significant influence in the field. The Petitioner has not otherwise shown the impact that his research on [REDACTED] mutations has had in the field. “Contributions of major significance” connotes that the petitioner’s work has significantly impacted the field. *See Visinscaia*, 4 F. Supp. 3d at 134.

The Petitioner notes that his findings have been incorporated into medical diagnostic guidelines, but the record contains only a single genetics test that references his research. He has not shown that medical diagnostic guidelines in the field at large have incorporated his research. He also cites a summary of a book published by *GeneReviews*,<sup>4</sup> which contains the research of [REDACTED] and others, indicating that microcephaly disorders are associated with gene mutations, including [REDACTED] but the Petitioner has not shown that these researchers cite his work or that this book has been of

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<sup>4</sup> The record contains a summary of *GeneReviews* which states that it is “an international point-of-care resource for busy clinicians.” *See* [www.ncbi.nlm.nih.gov/books/NBK1116/](http://www.ncbi.nlm.nih.gov/books/NBK1116/).

major significance to the field. Therefore, the Petitioner has not established that his research constitutes original contributions of major significance in the field to meet this criterion.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

The Director held that the Petitioner met this criterion an account of his articles published in the following journals: *Human Molecular Genetics*, *Cellular and Molecular Life Sciences*, and *Nucleic Acids Research*, among others. Thus, the Petitioner has established that he meets this criterion.

### III. CONCLUSION

The Petitioner is not eligible because he has not submitted the required initial evidence of either a qualifying one-time achievement, or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

**ORDER:** The appeal is dismissed.

Cite as *Matter of V-S-P-*, ID# 1940214 (AAO Jan. 30, 2019)